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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/686,778	10/10/2000	Tom Van Horn	22930-06085	5167
758	7590	03/23/2007		
FENWICK & WEST LLP SILICON VALLEY CENTER 801 CALIFORNIA STREET MOUNTAIN VIEW, CA 94041			EXAMINER GART, MATTHEW S	
			ART UNIT	PAPER NUMBER
			3625	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/23/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

09/686,778

Applicant(s)

VAN HORN ET AL.

Examiner

Matthew S. Gart

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 January 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 39-54 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 39-54 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Prosecution History Summary

- Claims 1-38 have been cancelled.
- Claims 39-54 have been added.
- Claim 39-54 are currently pending in the instant application.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 47-54 are rejected under 35 U.S.C. 101.

Referring to claims 47-54. Claims to computer-related inventions that are clearly nonstatutory fall into the same general categories as nonstatutory claims in other arts, namely natural phenomena such as magnetism, and abstract ideas or laws of nature which constitute "descriptive material." Abstract ideas, *Warmerdam*, 33 F.3d at 1360, 31 USPQ2d at 1759, or the mere manipulation of abstract ideas, *Schrader*, 22 F.3d at 292-93, 30 USPQ2d at 1457-58, are not patentable. Descriptive material can be characterized as either "functional descriptive material" or "nonfunctional descriptive material." In this context, "functional descriptive material" consists of data structures and computer programs which impart functionality when employed as a computer component. (The definition of "data structure" is "a physical or logical relationship among data elements, designed to support specific data manipulation functions." The New IEEE Standard Dictionary of Electrical and Electronics Terms 308 (5th ed. 1993).)

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"Nonfunctional descriptive material" includes but is not limited to music, literary works and a compilation or mere arrangement of data. Both types of "descriptive material" are nonstatutory when claimed as descriptive material per se. Warmerdam, 33 F.3d at 1360, 31 USPQ2d at 1759. When functional descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized. Claim 47 fails to positively recite the computer program product embodied on the computer-readable medium. Furthermore, a computer processor is not positively executing the computer program product.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 39-54 are rejected under 35 U.S.C. 102(e) as being anticipated by anticipated by Pallakoff (U.S. Patent No. 6,269,343).

Referring to claim 39. Pallakoff discloses a computer-implemented method for providing information from a seller about an on-line group buying sale to a website for referring potential buyers to the on-line group buying sale, the method comprising:

receiving item data from each of the plurality of sellers that defines a featured item for an on-line group-buying sale, wherein each seller transmits the item data over an electronic network to a computerized facility configured to conduct a plurality of on-line group-buying sales for the featured items defined by the received item data over the electronic network (Pallakoff: Fig. 3, "31...product description");

receiving sales data from each of the plurality of sellers that provides the sellers directions for the on-line group-buying sale of the featured item, wherein each seller transmits the sales data over the electronic network to the computerized facility (Pallakoff: Fig. 3, "31...different price levels for different demand thresholds");

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storing the item data and the sales data received from each seller in a data repository, wherein the computerized facility uses received sales data to conduct the plurality of on-line group-buying sales of featured items defined by received item data (Pallakoff: column 12, lines 54-67);

receiving instructions for selecting an on-line group buying sale from the plurality of on-line group buying sales for a website for referring potential buyers to an on-line group buying sale (Pallakoff: column 6, line 47 to column 7, line 5);

receiving from the referring website a request for informational (Pallakoff: column 7, lines 15-31);

responsive to the request for information and the instructions for selecting an on-line group buying sale, selecting for the referring website an on-line group buying sale from the plurality of on-line group buying sales (Pallakoff: column 9, lines 34-65);

generating a display associated with the selected on-line group buying sales (Pallakoff: column 9, lines 34-65);

generating a link to the display (Pallakoff: Fig. 6, "63"); and

providing a link to the referring website, whereby a potential buyer accessing the referring website can access the link, and thereby access the display associated with the selected on-line group buying sale and participate in the selected on-line group buying sale (Pallakoff: Fig. 6, "63").

Referring to claim 40. Pallakoff further discloses a method wherein the request for information from the referring website contains a sales criterion, and selecting for the

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referring website an on-line group buying sale is performed responsive to the sales criterion (Pallakoff: Fig. 4).

Referring to claim 41. Pallakoff further discloses a method wherein the sales criterion comprises at least a timing criterion (Pallakoff: Fig. 4, "46").

Referring to claim 42. Pallakoff further discloses a method wherein the selected on-line group buying sale is offered exclusively to potential buyers who access the selected on-line group buying sale through the link provided to the referring website (Pallakoff: column 9, lines 34-65).

Referring to claim 43. Pallakoff further discloses a method comprising receiving instructions for displaying an on-line group buying sale from the referring website, and wherein generating a display is performed responsive to the instructions for displaying (Pallakoff: Fig. 5).

Referring to claim 44. Pallakoff further discloses a method wherein the instructions for displaying specify displaying the selected on-line group-buying sale in a random scheme (Pallakoff: Fig. 5).

Referring to claim 45. Pallakoff further discloses a method wherein the display comprises a link back to the referring website (Pallakoff: Fig. 6)

Referring to claim 46. Pallakoff further discloses a method wherein an instruction of the instructions for selecting comprises a selection, from a hierarchy of categories, of a category of goods/services to be sold in an on-line group buying sale (Pallakoff: column 6, line 47 to column 7, line 5).

Referring to claims 47-54. Claims 47-54 are rejected under the same rationale as set forth above in claims 39-46.

Response to Arguments

Applicant's arguments with respect to the pending claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew S. Gart whose telephone number is 571-272-3955. The examiner can normally be reached on M-F, 9-6.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeff Smith can be reached on 571-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Matthew Gart
Primary Examiner
March 21, 2007


MATTHEW S. GART
PRIMARY EXAMINER
TECHNOLOGY CENTER 3600